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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WILLIAM THOMAS HATFIELD, KENNETH BRAKELEY
WELLES, JAMES CLAUDE CARNAHAN, and DAVID MICHAEL
DAVENPORT

Appeal 2008-5548
Application 10/813,368
Technology Center 2600

Decided¹: March 19, 2009

Before KENNETH W. HAIRSTON, JOHN A. JEFFERY, and
CARL W. WHITEHEAD, JR., *Administrative Patent Judges*.

WHITEHEAD, JR., *Administrative Patent Judge*.

DECISION ON APPEAL

¹ The two-month time period for filing an appeal or commencing civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

Appellants appeal under 35 U.S.C. § 134 from the Examiner's rejection of claims 1-10, 12-22, and 24-34 (*see* App. Br. 2, Final Rejection, mailed September 21, 2006). We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

STATEMENT OF THE CASE

Appellants invented a monitoring system used for reporting the condition of lenses and reflectors used in lighting systems at remote locations.²

Claim 1 which further illustrates the invention, follows:

1. A system for monitoring status of a lighting system, the system comprising: a lamp assembly comprising a housing and a lamp disposed in the housing; a lens disposed adjacent to the lamp, the lens comprising a conductor adapted to lose electrical continuity upon occurrence of a crack in the lens; a monitoring system coupled to the conductor and configured to detect the loss of electrical continuity in the conductor; and a communication system for transmitting a signal to a remote location, representative of a state of continuity of the conductor.

The Rejections

The Examiner relies upon the following prior art references as evidence of unpatentability:

² See generally Spec. ¶¶ [0007] – [0012].

Lange	US 5,182,432	Jan. 26, 1993
Nesbitt	US 6,150,927	Nov. 21, 2000
Jessup	US 6,794,882 B2	Sep. 21, 2004

The Examiner rejected claims 1-10, 12-22 and 24-34 under 35 U.S.C. § 103 (a) as being unpatentable over Lange et al., Jessup and Nesbitt.

Rather than repeat the arguments of Appellants or the Examiner, we refer to the Briefs and the Answer for their respective details. In this decision, we have considered only those arguments actually made by Appellants. Arguments which Appellants could have made but did not make in the Briefs have not been considered and are deemed to be waived. See 37 C.F.R. § 41.37(c)(1)(vii).

Regarding the Examiner's obviousness rejection of representative claim 1³, Appellants argue the merits of the cited references (Lange, Jessup and Nesbitt) individually (App. Br. 6-9). Appellants argue that there is no reasonable basis for the combination of the references (App. Br. 9-11). It is the Examiner's position that individually the references do not disclose the

³ Appellants do not argue the claims individually and choose to argue the claims in regard to the validity of the combination of the cited references therefore we have chosen claim 1 to be the representative claim (App. Br. 9-11).

entirety of the invention claimed, however, it is the combination of the references that renders the invention obvious (Ans. 6, 7).

ISSUE

Have the Appellants shown that the Examiner erred by employing impermissible hindsight in finding that Lange in combination with Jessup and Nesbitt disclose a lighting monitoring system capable of communicating to remote areas under 35 U.S.C. § 103?

FINDINGS OF FACT

The record supports the following findings of fact (FF) by a preponderance of the evidence.

1. Lange discloses a light monitoring system.

Figure 1 of Lange's system.

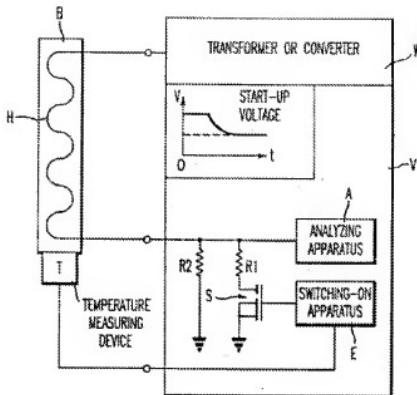


Figure 1 shows a lighting monitoring system for a motor vehicle headlight with an integrated heating element.

2. Lange discloses that when a crack to the light-transmissive shield is detected, the power supply unit of the high pressure gas discharge lamp is switched to provide no further current (col. 3, ll. 10-15).
3. Jessup discloses a rupture detector for a windshield assembly (col. 3, ll. 56-58). The rupture detector has a conductive member that activates an alarm based upon the measured or calculated electric potential of the conductive member (col. 5, ll. 42-55).
4. Nesbitt discloses an anti-vandalism detector and alarm system for reporting the act of scratching or cutting of hard surface materials such as glass or plastic (col. 3, ll. 35-50).

5. Nesbitt discloses an alarm system that broadcasts information about the status of the hard surface materials (col. 5, ll. 36-52).
6. Nesbitt indicates that the anti-vandalism detector has several applications such as vehicles, decorative glass windows advertising signs, outdoor electronic signs; anywhere that glass or other comparable materials are subject to damage (col. 3, ll. 24-31).

PRINCIPLES OF LAW

“Non-obviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references.” *In re Merck*, 800 F.2d 1091, 1097 (Fed. Cir. 1986) (citing *In re Keller*, 642 F.2d 413, 425 (Fed. Cir. 1981)).

“Common sense teaches, however, that familiar items may have obvious uses beyond their primary purposes, and in many cases a person of ordinary skill will be able to fit the teachings of multiple patents together like pieces of a puzzle.” *KSR Int’l v. Teleflex Inc.*, 127 S.Ct. 1727, 1742 (2007).

“A *prima facie* case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art.” *In re Bell*, 991 F.2d 781, 783 (Fed. Cir. 1993) (quoting *In re Rinehart*, 531 F.2d 1048, 1051 (CCPA 1976)).

ANALYSIS

35 U.S.C. § 103 (a) rejections

Appellants argue that the 35 U.S.C. § 103 (a) rejections of the pending claims lack reasonable basis for combining the cited references (App. Br. 3). Lange discloses a light-transmissive shield crack detector for a motor vehicle headlight (col. 1, ll. 40-45, FF1). Nesbitt discloses a scratch detector system that can be employed to protect materials such as glass and plastic incorporated in the advertising signs, outdoor signs - anywhere glass or other suitable materials are subject to damage (FF6). Further, the Nesbitt monitoring system broadcasts a status report of the materials in case of damage (FF5). Jessup discloses an alarm associated with a rupture detector for a windshield in a motor vehicle (FF3). Lange, Nesbitt and Jessup all address monitoring the status of hard surface materials and thus provide a reasonable basis for combining in a 35 U.S.C. § 103 rejection.

Lange discloses a system for monitoring the status of a lighting system, as stated in claim 1, (FF 1, App. Br. 12) having a lamp assembly (col. 1, ll. 62-67), a lens adjacent the lamp (FF1, element B), a conductor adapted to lose electrical continuity upon the occurrence of damage to the lens (col. 3, ll. 3-15, FF1, element H), and a monitoring system coupled to the conductor and configured to detect the loss of electrical continuity in the conductor (col. 3, ll. 3-15, FF1, element A). The loss of electrical continuity shuts down the high pressure gas discharge lamp (FF2). The operation status of the lamp is conveyed by the disruption of lamp operation thus providing notice that the lamp is malfunctioning (FF2).

Jessup's notification of a damaged hard material surface is in the form of an alarm (FF3). Jessup's alarm has the same function as Lange's electrical continuity shut down and that is to provide notice or the status of a damage material surface (FF1-FF3). However, as stated by the Examiner, Lange's monitoring system does not disclose transmitting a signal to a remote location providing the status of the lamp (Ans. 3-4).

It is the Nesbitt reference that makes up for the deficiency of Lange by disclosing a monitoring system that sends out a remote signal when the hard surface material (glass, plastic, etc.) of the device is scratched or cut (FF5). Nesbitt indicates that the monitoring system can be incorporated into various devices such as vehicles and electric outdoor signs (FF6).

Appellants argue that Nesbitt is not reasonably combinable with Lange because "Nesbitt does not consider breakage of a headlamp as warranting remote communications as it does not constitute intrusion or vandalism" (App. Br. 8, ll. 15-17 (emphasis omitted)). Distinguishing the rationale behind the damage of the headlamp in Lange is not essential in order for Nesbitt to be combinable with Lange. Lange is concerned with the damage to the headlamp and controlling the extent of the hazardous situation that can stem from the damage (FF2). If the headlamp in the Lange/Nesbitt combination is damaged, the modified invention is still going to send out a remote signal regardless of the rationale behind the breakage.

Appellants further argue that the references are not combinable because Lange's alert would be confined to the driver only within the car and therefore the need to remote broadcast the status of the headlamp of

Lange is not likely (App. Br. 9). The Appellants compare Lange's headlamp status to the open/close status of a car door, open/close status of the car trunk, low fuel monitoring, etc. (App. Br. 9). Lange does not limit the monitoring of the headlamp to within the car only, but is silent in regard to remote broadcasts on the headlamp status. As stated previously Nesbitt is an anti-vandalism detection and alarm system (*see Abstract, FF4*). Police departments, security services, the military, etc. would all have direct interest in protecting vehicles from damage.

For the foregoing reasons, we find there is at least a rational basis to combine the references to arrive at the claimed invention as the Examiner proposes.

CONCLUSION OF LAW

The Appellants have not shown that the Examiner erred in finding that the combination of Lange, Jessup and Nesbitt renders claims 1-10, 12-22 and 24-34 obvious under 35 U.S.C. § 103.

DECISION

The Examiner's decision rejecting claims 1-10, 12-22 and 24-34 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

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Application 10/813,368

AFFIRMED

gvw

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